

FIRST REGULAR SESSION

SENATE BILL NO. 428

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Read 1st time February 23, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1813S.011

AN ACT

To repeal sections 319.010, 319.015, 319.016, 319.022, 319.024, 319.025, 319.026, 319.027, 319.028, 319.029, 319.030, 319.035, 319.037, 319.040, 319.041, 319.042, 319.045, and 319.050, RSMo, relating to Missouri one call.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 319.010, 319.015, 319.016, 319.022, 319.024, 319.025, 319.026, 319.027, 319.028, 319.029, 319.030, 319.035, 319.037, 319.040, 319.041, 319.042, 319.045, and 319.050, RSMo, are repealed, to read as follows:

[319.010. Sections 319.010 through 319.050 shall be known as the "Underground Facility Safety and Damage Prevention Act".]

[319.015. For the purposes of sections 319.010 to 319.050, the following terms mean:

(1) "Approximate location", a strip of land not wider than the width of the underground facility plus two feet on either side thereof. In situations where reinforced concrete, multiplicity of adjacent facilities or other unusual specified conditions interfere with location attempts, the owner or operator shall designate to the best of his or her ability an approximate location of greater width;

(2) "Design request", a request from any person for facility location information for design purposes only;

(3) "Emergency", either:

(a) A sudden, unexpected occurrence, presenting a clear and imminent danger demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services. "Unexpected occurrence" includes, but is not limited to,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 thunderstorms, high winds, ice or snow storms, fires, floods,
17 earthquakes, or other soil or geologic movements, riots, accidents,
18 water or wastewater pipe breaks, vandalism, or sabotage; or

19 (b) Any interruption in the generation, transmission, or
20 distribution of electricity, or any damage to property or facilities
21 that causes or could cause such an interruption;

22 (4) "Excavation", any operation in which earth, rock or
23 other material in or on the ground is moved, removed or otherwise
24 displaced by means of any tools, equipment or explosives and
25 includes, without limitation, backfilling, grading, trenching,
26 digging, ditching, drilling, well-drilling, augering, boring,
27 tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in,
28 ripping, driving, and demolition of structures, except that, the use
29 of mechanized tools and equipment to break and remove pavement
30 and masonry down only to the depth of such pavement or masonry,
31 the use of pressurized air to disintegrate and suction to remove
32 earth, rock and other materials, the tilling of soil for agricultural
33 or seeding purposes, and the installation of marking flags and
34 stakes for the location of underground facilities that are not driven
35 shall not be deemed excavation. Backfilling or moving earth on the
36 ground in connection with other excavation operations at the same
37 site shall not be deemed separate instances of excavation;

38 (5) "Excavator", any person making one or more excavations
39 who is required to make notices of excavation under the
40 requirements of sections 319.010 to 319.050;

41 (6) "Marking", the use of paint, flags, stakes, or other
42 clearly identifiable materials to show the field location of
43 underground facilities, or the area of proposed excavation, in
44 accordance with the color code standard of the American Public
45 Works Association. Unless otherwise provided by the American
46 Public Works Association, the following color scheme shall be used:
47 blue for potable water; purple for reclaimed water, irrigation and
48 slurry lines; green for sewers and drain lines; red for electric,
49 power lines, cables, conduit and lighting cables; orange for
50 communications, including telephone, cable television, alarm or
51 signal lines, cable or conduit; yellow for gas, oil, steam, petroleum

52 or gaseous materials; white for proposed excavation; pink for
53 temporary marking of construction project site features such as
54 centerline and top of slope and toe of slope;

55 (7) "Notification center", a statewide organization operating
56 twenty-four hours a day, three hundred sixty-five days a year on a
57 not-for-profit basis, supported by its participants, or by more than
58 one operator of underground facilities, having as its principal
59 purpose the statewide receipt and dissemination to participating
60 owners and operators of underground facilities of information
61 concerning intended excavation activities in the area where such
62 owners and operators have underground facilities, and open to
63 participation by any and all such owners and operators on a fair
64 and uniform basis. Such notification center shall be governed by
65 a board of directors elected by the membership and composed of
66 representatives from each general membership group, provided
67 that one of the board members shall be a representative of the
68 state highways and transportation commission so long as the
69 commission is a participant in the notification center;

70 (8) "Notification center participant", an underground facility
71 owner who is a member and participant in the notification center;

72 (9) "Permitted project", a project for which a permit for the
73 work to be performed is required to be issued by a local, state or
74 federal agency and, as a prerequisite to receiving such permit, the
75 applicant is required to notify all underground facility owners in
76 the area of the work for purposes of identifying the location of
77 existing underground facilities;

78 (10) "Person", any individual, firm, joint venture,
79 partnership, corporation, association, cooperative, municipality,
80 political subdivision, governmental unit, department or agency and
81 shall include a notification center and any trustee, receiver,
82 assignee or personal representative thereof;

83 (11) "Pipeline facility" includes, without limitation, new and
84 existing pipe, rights-of-way, and any equipment, facility, or
85 building used or intended for use in the transportation of gas or the
86 treatment of gas, or used or intended for use in the transportation
87 of hazardous liquids including petroleum, or petroleum products;

88 (12) "Preengineered project", a project which is approved by
89 an agency or political subdivision of the state and for which the
90 agency or political subdivision responsible for the project, as part
91 of its engineering and contract procedures, holds a meeting prior
92 to the commencement of any construction work on such project and
93 in such meeting all persons determined by the agency or political
94 subdivision to have underground facilities located within the
95 excavation area of the project are invited to attend and given an
96 opportunity to verify or inform any agency or political subdivision
97 of the location of their underground facilities, if any, within the
98 excavation area and where the location of all known underground
99 facilities are duly located or noted on the engineering drawing as
100 specifications for the project;

101 (13) "State plane coordinates", a system of locating a point
102 on a flat plane developed by the National Oceanic and Atmospheric
103 Administration and utilized by state agencies, local governments,
104 and other persons to designate the site of a construction project;

105 (14) "Trenchless excavation", horizontal excavation parallel
106 to the surface of the earth which does not use trenching or vertical
107 digging as the primary means of excavation, including but not
108 limited to directional boring, tunneling, or augering;

109 (15) "Underground facility", any item of personal property
110 which shall be buried or placed below ground for use in connection
111 with the storage or conveyance of water, storm drainage, sewage,
112 telecommunications service, cable television service, electricity, oil,
113 gas, hazardous liquids or other substances, and shall include but
114 not be limited to pipes, sewers, conduits, cables, valves, lines,
115 wires, manholes, attachments, or appurtenances, and those
116 portions of pylons or other supports below ground that are within
117 any public or private street, road or alley, right-of-way dedicated
118 to the public use or utility easement of record, or prescriptive
119 easement. If gas distribution lines or electric lines,
120 telecommunications facilities, cable television facilities, water
121 service lines, water system, storm drainage or sewer system lines,
122 other than those used for vehicular traffic control, lighting of
123 streets and highways and communications for emergency response,

124 are located on private property and are owned solely by the owner
125 or owners of such private property, such lines or facilities receiving
126 service shall not be considered underground facilities for purposes
127 of this chapter, except at locations where they cross or lie within an
128 easement or right-of-way dedicated to public use or owned by a
129 person other than the owner of the private property. Water and
130 sanitary sewer lines providing service to private property that are
131 owned solely by the owner of such property shall not be considered
132 underground facilities at any location. Water, storm drainage,
133 cross road drainage, or sewer lines owned by the state highways
134 and transportation commission shall not be considered
135 underground facilities at any location. For railroads regulated by
136 the Federal Railroad Administration, "underground facility" as
137 used in sections 319.015 to 319.050 shall not include any
138 excavating done by a railroad when such excavating is done
139 entirely on land which the railroad owns or on which the railroad
140 operates, or in the event of emergency, on adjacent land;

141 (16) "Underground facility owner", any person who owns or
142 operates underground facilities as defined by this section;

143 (17) "Working day", every day, except Saturday, Sunday or
144 a legally declared local, state or federal holiday.]

2 [319.016. Notwithstanding any provision of sections 319.010
3 to 319.050 to the contrary, the state highways and transportation
4 commission shall not be required to be a notification center
5 participant after December 31, 2011, but nothing in this section
6 shall prohibit the commission from voluntarily choosing to be a
7 notification center participant after that date.]

2 [319.022. 1. Any person, except a railroad regulated by the
3 Federal Railroad Administration, who installs or otherwise owns
4 or operates an underground facility shall become a participant in
5 a notification center upon first acquiring or owning or operating
6 such underground facility. Except as provided in section 319.016,
7 all owners and operators of underground facilities within the state
8 shall maintain participation in a notification center.

9 2. All owners and operators of underground facilities which
are located in a county of the first classification or second

10 classification within the state who are not members of a
11 notification center on August 28, 2001, shall become participants
12 in the notification center prior to January 1, 2003. Any person who
13 installs or otherwise becomes an owner or operator of an
14 underground facility which is located within a county of the first
15 classification or second classification on or after January 1, 2003,
16 shall become a participant in the notification center within thirty
17 days of acquiring or operating such underground
18 facility. Beginning January 1, 2003, all owners and operators of
19 underground facilities which are located in a county of the first
20 classification or second classification within the state shall
21 maintain participation in the notification center except as provided
22 otherwise in section 319.016.

23 3. All owners and operators of underground facilities which
24 are located in a county of the third classification or fourth
25 classification within the state who are not members of a
26 notification center on August 28, 2001, shall become participants
27 in the notification center prior to January 1, 2005. Any person who
28 installs or otherwise becomes an owner or operator of an
29 underground facility which is located within a county of the third
30 classification or fourth classification on or after January 1, 2005,
31 shall become a participant in the notification center within thirty
32 days of acquiring or operating such underground
33 facility. Beginning January 1, 2005, all owners and operators of
34 underground facilities which are located in a county of the third
35 classification or fourth classification within the state shall
36 maintain participation in the notification center except as provided
37 otherwise in section 319.016.

38 4. The notification center shall maintain in its offices and
39 make available to any notification center participant or excavator
40 upon request a current list of the names and addresses of each
41 notification center participant, including the county or counties
42 wherein each participant has underground facilities. The
43 notification center may charge a reasonable fee to notification
44 center participants or excavators requesting such list as is
45 necessary to recover the actual costs of printing and mailing.

46 5. Excavators shall be informed of the availability of the list
47 of notification center participants required in subsection 3 of this
48 section in the manner provided for in section 319.024.

49 6. An annual audit or review of the notification center shall
50 be performed by a certified public accountant and a report of the
51 findings submitted to the speaker of the house of representatives
52 and the president pro tem of the senate.]

 [319.024. 1. Every person owning or operating an
2 underground facility shall assist excavators and the general public
3 in determining the location of underground facilities before
4 excavation activities are begun or as may be required by subsection
5 6 of section 319.026 or subsection 1 of section 319.030 after an
6 excavation has commenced. Methods of informing the public and
7 excavators of the means of obtaining such information may, but
8 need not, include advertising, including advertising in periodicals
9 of general circulation or trade publications, information provided
10 to professional or trade associations which routinely provide
11 information to excavators or design professionals, or sponsoring
12 meetings of excavators and design professionals for such
13 purposes. Information provided by the notification center on behalf
14 of persons owning or operating an underground facility shall be
15 deemed in compliance with this section by such persons. Every
16 person owning or operating underground facilities who has a
17 written policy in determining the location of its underground
18 facilities shall make available a copy of said policy to any
19 notification center participant or excavator upon request.

20 2. Every person owning or operating underground pipeline
21 facilities shall, in addition to the requirements of subsection 1 of
22 this section:

23 (1) Identify on a current basis persons who normally engage
24 in excavation activities in the area in which the pipeline is
25 located. Every such person who is a participant in a notification
26 center shall be deemed to comply with this subdivision if such
27 notification center maintains and updates a list of the names and
28 addresses of all excavators who have given notice of intent to
29 excavate to such notification center during the previous year and

30 provided the notification center shall, not less frequently than
31 annually, provide public notification and actual notification to all
32 excavators on such list of the existence and purpose of the
33 notification center, and procedures for obtaining information from
34 the notification center;

35 (2) Either directly or through the notification center, notify
36 excavators and the public in the vicinity of his or her underground
37 pipeline facility of the availability of the notification center by
38 including the information set out in subsection 1 of section 319.025
39 in notifications required by the safety rules of the Missouri public
40 service commission relating to its damage prevention program;

41 (3) Notify excavators annually who give notice of their
42 intent to excavate of the type of marking to be provided and how to
43 identify the markings.]

[319.025. 1. Except as provided in subsection 3 of section
2 319.030 and in section 319.050, a person shall not make or begin
3 any excavation in any public street, road or alley, right-of-way
4 dedicated to the public use or utility easement of record or within
5 any private street or private property without first giving notice to
6 the notification center and obtaining information concerning the
7 possible location of any underground facilities which may be
8 affected by said excavation from underground facility owners whose
9 names appear on the current list of participants in the notification
10 center and who were communicated to the excavator as notification
11 center participants who would be informed of the excavation
12 notice. Prior to January 1, 2003, a person shall not make or begin
13 any excavation pursuant to this subsection without also making
14 notice to owners or operators of underground facilities which do not
15 participate in a notification center and whose name appears on the
16 current list of the recorder of deeds in and for the county in which
17 the excavation is to occur. Beginning January 1, 2003, notice to
18 the notification center of proposed excavation shall be deemed
19 notice to all owners and operators of underground facilities. The
20 notice referred to in this section shall comply with the provisions
21 of section 319.026. As part of the process to request the locating of
22 underground facilities and having them properly marked, the

23 notification center shall ask excavators to identify whether or not
24 the proposed excavation will be on a public right-of-way or
25 easement dedicated to public use for vehicular traffic.

26 2. An excavator's notice to owners and operators of
27 underground facilities participating in the notification center
28 pursuant to section 319.022 is ineffective for purposes of subsection
29 1 of this section unless given to such notification center. Prior to
30 January 1, 2003, the notice required by subsection 1 of this section
31 shall be given directly to owners or operators of underground
32 facilities who are not represented by a notification center.

33 3. Notification center participants shall be relieved of the
34 responsibility to respond to a notice of intent to excavate received
35 directly from the person intending to commence an excavation,
36 except for requests for clarification of markings through on-site
37 meetings as provided in subsection 1 of section 319.030 and
38 requests for locations at the time of an emergency as provided by
39 section 319.050.

40 4. If the owner or operator notifies the excavator that the
41 area of excavation cannot be determined from the description
42 provided by the excavator through the notice required by this
43 section, the excavator shall provide clarification of the area of
44 excavation by markings or by providing project plans to the owner
45 or operator, or by meeting on the site of the excavation with
46 representatives of the owner or operator as provided by subsection
47 1 of section 319.030.

48 5. Notwithstanding the provisions of this section to the
49 contrary, a person shall not make or begin any excavation in any
50 state highway, or on the right-of-way of any state highway, without
51 first obtaining a permit from the state highways and transportation
52 commission pursuant to section 227.240, RSMo, provided however,
53 the provisions of this subsection shall not apply to railroad
54 right-of-way owned or operated by a railroad.]

2 [319.026. 1. An excavator shall serve notice of intent to
3 excavate to the notification center by toll-free telephone number
4 operated on a twenty-four hour per-day, seven day per-week basis
or by facsimile or by completing notice via the Internet at least two

5 working days, but not more than ten working days, before the
6 expected date of commencing the excavation activity. The
7 notification center receiving such notice shall inform the excavator
8 of all notification center participants to whom such notice will be
9 transmitted and shall promptly transmit all details of such notice
10 provided under subsection 2 of this section to every notification
11 center participant in the area of excavation.

12 2. Notices of intent to excavate given pursuant to this
13 section shall contain the following information:

14 (1) The name and telephone number of the person filing the
15 notice of excavation, if the telephone number is different than that
16 of the excavator, and the name, address, telephone number of the
17 excavator and whether the excavator's telephone is equipped with
18 a recording device;

19 (2) The date the excavation activity is expected to
20 commence, the depth of planned excavation and, if applicable, that
21 the use of explosives is anticipated on the excavation site, and the
22 type of excavation being planned, including whether the excavation
23 involves trenchless excavation;

24 (3) The facsimile number, e-mail address, and cellular
25 telephone number of the excavator, if any;

26 (4) The name of the person primarily responsible for
27 conducting the excavation or managing the excavation process, and
28 if any of the information stated in subdivision (1) or (3) of this
29 subsection is different for the person primarily responsible for the
30 excavation, the notice shall also state the same information for that
31 person;

32 (5) A detailed description accepted by the notification center
33 sufficient for the location of the excavation by any one or more of
34 the following means: by reference to a specific street address, or
35 by description of location in relation to the nearest numbered,
36 lettered, or named state or county road or city street for which a
37 road sign is posted, or by latitude and longitude including the
38 appropriate description in degrees, minutes, and seconds, or by
39 state plane coordinates;

40 (6) A description of the site of excavation by approximate

41 distance and direction from the nearest state or county road or city
42 street or intersection of such roads or streets unless previously
43 provided under subdivision (5) of this subsection, and the proximity
44 of the site to any prominent landmarks;

45 (7) A description of the location or locations of the
46 excavation at the site described by direction and approximate
47 distance in relation to prominent features of the site, such as
48 existing buildings or roadways;

49 (8) Directions as to how to reach the site of the excavation
50 from the nearest such road, if the excavation is not on or near a
51 posted numbered, lettered, or named state or county road or city
52 street.

53 3. The notification center receiving such notice shall solicit
54 all information required by subsection 2 of this section and shall
55 require the excavator to provide all such information before notice
56 by the excavator is deemed to be completed pursuant to sections
57 319.015 to 319.050. The notification center shall transmit all
58 details of such notice as required by this section.

59 4. A record of each notice of intent to excavate shall be
60 maintained by the notification center or, prior to January 1, 2003,
61 by the nonmember owner or operator receiving direct notifications
62 for a period of five years. The record shall include the date the
63 notice was received and all information required by subsection 2 of
64 this section which was provided by the excavator and a record of
65 the underground facility owners notified by the notification center.
66 If the notification center creates a record of the notice by telephonic
67 recording, such record of the original notice shall be maintained for
68 one year from the date of receipt. Records of notices to excavate
69 maintained by the notification center in electronic form shall be
70 deemed to be records under this subsection. Persons holding
71 records of notices of intent to excavate and records of information
72 provided to the excavator by the notification center or owner or
73 operator of the facility, shall make copies of such records available
74 for a reasonable copying fee upon the request of the owner or
75 operator of the underground facilities or the excavator filing the
76 notice.

77 5. If in the course of excavation the person responsible for
78 the excavation operations discovers that the owner or operator of
79 the underground facility who is a participant in a notification
80 center has incorrectly located the underground facility, he or she
81 shall notify the notification center which shall inform the
82 notification center participant. If the owner or operator of the
83 underground facility is not a participant in a notification center
84 prior to the January 1, 2003, effective date for mandatory
85 participation pursuant to section 319.022, the person responsible
86 for the excavation shall notify the owner. The person responsible
87 for maintaining records of the location of underground facilities for
88 the notification center participant shall correct such records to
89 show the actual location of such facilities, if current records are
90 incorrect.

91 6. When markings have been provided in response to a
92 notice of intent to excavate, excavators may commence or continue
93 to work within the area described in the notice for so long as the
94 markings are visible. If markings become unusable due to weather,
95 construction or other cause, the excavator shall contact the
96 notification center to request remarking. Such notice shall be
97 given in the same manner as original notice of intent to excavate,
98 and the owner or operator shall remark the site in the same
99 manner, within the same time, as required in response to an
100 original notice of intent to excavate. Each excavator shall exercise
101 reasonable care not to unnecessarily disturb or obliterate markings
102 provided for location of underground facilities. If remarking is
103 required due to the excavator's failure to exercise reasonable care,
104 or if repeated unnecessary requests for remarking are made by an
105 excavator even though the markings are visible and usable, the
106 excavator may be liable to the owner or operator for the reasonable
107 cost of such remarking.]

 [319.027. 1. Any person may make design requests by
2 contacting the notification center. Such design requests shall
3 include all information deemed necessary by the notification center
4 to complete the notice, including the identification of the person
5 and a description of the location of the project being designed and

6 other information similar to that required of excavators under
7 section 319.026.

8 2. Design requests shall be made to the notification center
9 at least five working days, but not more than ten working days,
10 before the date the person has requested receiving the information
11 from the underground facility owner. Upon receipt of a design
12 request, the notification center shall inform the person of the name
13 of all notification center participants to whom the notice will be
14 transmitted and shall promptly transmit such notice to the
15 appropriate underground facility owners.

16 3. Every underground facility owner who receives a design
17 request shall mark the location of the facility, or contact the person
18 making the request, within five working days after the date the
19 notice was received from the notification center. If the person
20 making the request was contacted as an alternative to marking
21 location, the person and the underground facility owner shall
22 mutually agree on a schedule and method for providing the
23 information.

24 4. No excavation may be commenced based upon
25 information received through a design request. Obtaining
26 information through a design request shall not excuse any person
27 commencing an excavation from making notice and obtaining
28 information under sections 319.025 and 319.026 concerning the
29 possible location of any underground facilities which may be
30 affected.]

[319.028. 1. On or after January 1, 2003, an owner or
2 operator of underground facilities, who has become a participant in
3 the notification center as required in section 319.022, will maintain
4 participation in the notification center, unless it is determined that
5 the inaccuracy rate of the notification center reaches fifteen
6 percent. The accuracy rate shall be determined by the number of
7 notifications of an excavation, where the owner or operator has no
8 underground facilities at the excavation site, as described in the
9 excavators notification, divided by the total number of notifications
10 to an owner or operator of underground facilities during any
11 twelve-month period.

12 2. Once the notification center has an inaccuracy rate of
13 fifteen percent or higher for any owner or operator of underground
14 facilities, then any such owner or operator may withdraw from
15 participation in the notification center by providing written notice
16 to the notification center of its withdrawal. The owner or operator
17 shall then file with the recorder of deeds for each county it has
18 underground facilities a statement that it has underground
19 facilities and a name and phone number of a contact person that
20 excavators shall contact and notify of its intent to excavate. The
21 owner or operator shall also publish, at least quarterly, in a
22 newspaper or other publication of general circulation in counties
23 that have underground facilities a statement that the owner or
24 operator has underground facilities and who the excavator shall
25 contact regarding its intent to excavate.

26 3. After January 1, 2003, in the event that an owner or
27 operator withdraws from the notification center no party may use
28 in any legal proceeding the fact that an owner or operator has
29 withdrawn from the notification center as evidence to establish
30 negligence, recklessness, lack of adherence to industry standards,
31 or any other manner which would suggest that the owner or
32 operator failed to comply with any standard of care.]

 [319.029. Notwithstanding the fact that a project is a
2 preengineered project or a permitted project, or that a design
3 request was previously made, excavators connected therewith shall
4 be required to give notification in accordance with sections 319.025
5 and 319.026 prior to commencement of excavation.]

 [319.030. 1. Every person owning or operating an
2 underground facility to whom notice of intent to excavate is
3 required to be given shall, upon receipt of such notice as provided
4 in this section from a person intending to commence an excavation,
5 inform the excavator as promptly as practical, but not in excess of
6 two working days, unless otherwise mutually agreed, of the
7 approximate location of underground facilities in or near the area
8 of the excavation so as to enable the person engaged in the
9 excavation work to locate the facilities in advance of and during the
10 excavation work. The two working days provided for notice in this

11 subsection and subsection 1 of section 319.026, shall begin at 12:00
12 a.m. following the receipt of the request by the notification center.
13 If the information available to the owner or operator of a pipeline
14 facility or an underground electric or communications cable
15 discloses that valves, vaults or other appurtenances are located in
16 or near the area of excavation, the owner or operator shall either
17 inform the excavator of the approximate location of such
18 appurtenances at the same time and in the same manner as the
19 approximate location of the remainder of the facility is provided, or
20 shall at such time inform the excavator that appurtenances exist
21 in the area and provide a telephone number through which the
22 excavator may contact a representative of the owner or operator
23 who will meet at the site within one working day after request from
24 the excavator and at such meeting furnish the excavator with the
25 available information about the location and nature of such
26 appurtenances. If the excavator states in the notice of intent to
27 excavate that the excavation will involve trenchless technology, the
28 owner or operator shall inform the excavator of the depth, to the
29 best of his or her knowledge or ability, of the facility according to
30 the records of the owner or operator. The owner or operator shall
31 provide the approximate location of underground facilities by use
32 of markings. If flags or stakes are used, such marking shall be
33 consistent with the color code and other standards for ground
34 markings. Persons representing the excavator and the owner or
35 operator shall meet on the site of excavation within two working
36 days of a request by either person for such meeting for the purpose
37 of clarifying markings, or upon agreement of the excavator and
38 owner or operator, such meeting may be an alternate means of
39 providing the location of facilities by originally marking the
40 approximate location of the facility at the time of the meeting. If
41 upon receipt of a notice of intent to excavate, an owner or operator
42 determines that he or she neither owns or operates underground
43 facilities in or near the area of excavation, the owner or operator
44 shall within two working days after receipt of the notice, inform the
45 excavator that the owner or operator has no facilities located in the
46 area of the proposed excavation. The owner or operator of the

47 underground facility shall make notice to the excavator that no
48 facilities are located in the area of excavation by contacting the
49 excavator by any of the following methods:

50 (1) By calling the primary number of the excavator or by
51 calling the telephone number of the responsible person as provided
52 by the excavator under subdivision (4) of subsection 2 of section
53 319.026;

54 (2) By leaving a message on the recording device for such
55 numbers;

56 (3) By calling the cellular telephone number of the
57 excavator or responsible person;

58 (4) By notifying the excavator by facsimile or electronic
59 mail at numbers or addresses stated by the excavator in the notice
60 of excavation made under subsection 2 of section 319.026;

61 (5) By marking "clear" or "OK" at the site of excavation; or

62 (6) By verbally informing the excavator in person.

63 If the only means of contacting the excavator is one or more
64 telephone numbers provided by the excavator in the notice of
65 excavation under section 319.026, then two attempts by the
66 underground facility owner to contact the excavator at one of the
67 telephone numbers provided shall constitute compliance with this
68 subsection.

69 2. A record of the date and means of informing the
70 excavator that no facilities were located by the owner or operator
71 shall be included in the written records of the underground facility
72 owner regarding each specific notice of excavation.

73 3. In the event that a person owning or operating an
74 underground facility fails to comply with the provisions of
75 subsection 1 of this section after notice given by an excavator in
76 compliance with section 319.026, the excavator, prior to
77 commencing the excavation, shall give a second notice to the
78 notification center as required by section 319.026 stating that there
79 has been no response to the original notice given under section
80 319.026. After the receipt of the notice stating there has been "no
81 response", the owner or operator of an underground facility shall,
82 within two hours of the receipt of such notice, mark its facilities or

83 contact and inform the excavator of when the facilities will be
84 marked; provided, however, that for "no response" notices made to
85 the notification center by 2:00 p.m., the markings shall be
86 completed on the working day the notice is made to the notification
87 center, and provided that for "no response" notices made to the
88 notification center after 2:00 p.m., the markings shall be completed
89 no later than 10:00 a.m. on the next working day. If an
90 underground facility owner fails to mark its facilities or contact the
91 excavator as required by this subsection, the excavator may
92 commence the excavation. Nothing in this subsection shall excuse
93 the excavator from exercising the degree of care in making the
94 excavation as is otherwise required by law.

95 4. For purposes of this section, a period of two working days
96 begins at 12:00 a.m. following when the request is made.]

2 [319.035. Obtaining information as required by sections
3 319.010 to 319.050 does not excuse any person making any
4 excavation from doing so in a careful and prudent manner.]

5 [319.037. 1. Notwithstanding any other provision of law to
6 the contrary, the procedures and requirements set forth in this
7 section shall apply on the site of any excavation involving
8 trenchless excavation, including directional drilling, where the
9 approximate location of underground facilities has been marked in
10 compliance with section 319.030 and where any part of the walls
11 of the intended bore are within the marked approximate location
12 of the underground facility.

13 2. The excavator shall not use power-driven equipment for
14 trenchless excavation, including directional drilling, within the
15 marked approximate location of such underground facilities until
16 the excavator has made careful and prudent efforts to confirm the
17 horizontal and vertical location thereof in the vicinity of the
18 proposed excavation through methods appropriate to the geologic
19 and weather conditions, and the nature of the facility, such as the
20 use of electronic locating devices, hand digging, pot holing when
21 practical, soft digging, vacuum methods, use of pressurized air or
22 water, pneumatic hand tools or other noninvasive methods as such
23 methods are developed. Such methods of confirming location shall

20 not violate established safety practices. Nothing in this subsection
21 shall authorize any person other than the owner or operator of a
22 facility to attach an electronic locating device to any underground
23 facility. For excavations paralleling the underground facility, such
24 efforts to confirm the location of the facility shall be made at
25 careful and prudent intervals. The excavator shall also make
26 careful and prudent efforts by such means as are appropriate to the
27 geologic and weather conditions and the nature of the facility, to
28 confirm the horizontal and vertical location of the boring device
29 during boring operations. Notwithstanding the foregoing, the
30 excavator shall not be required to confirm the horizontal or vertical
31 location of the underground facilities if the excavator, using the
32 methods described in this section, excavates a hole over the
33 underground facilities to a depth two feet or more below the
34 planned boring path and then carefully and prudently monitors the
35 horizontal and vertical location of the boring device in a manner
36 calculated to enable the device to be visually observed by the
37 excavator as it crosses the entire width of the marked approximate
38 location of the underground facilities.]

[319.040. The failure of any excavator to give notice of
2 proposed excavation activities as required by this chapter shall be
3 a rebuttable presumption of negligence on his part in the event
4 that such failure shall cause injury, loss or damage. In addition to
5 any penalties provided herein, liability under common law may
6 apply.]

[319.041. Nothing in the foregoing shall relieve an
2 excavator from the obligation to excavate in a safe and prudent
3 manner, nor shall it absolve an excavator from liability for damage
4 to legally installed facilities.]

[319.042. Notwithstanding any provision of law to the
2 contrary, nothing in this chapter shall abrogate any contractual
3 provisions entered into between any railroad and any other party
4 owning or operating an underground facility within the railroad's
5 right-of-way. For railroads regulated by the Federal Railroad
6 Administration, sections 319.015 to 319.050 shall not include any
7 underground facility owned or operated by a railroad on land which

8 the railroad owns or any excavation done by a railroad when such
9 excavation is done entirely on land which the railroad owns.]

2 [319.045. 1. In the event of any damage or dislocation or
3 disturbance of any underground facility in connection with any
4 excavation, the person responsible for the excavation operations
5 shall immediately notify the notification center. This subsection
6 shall be deemed to require reporting of any damage, dislocation, or
7 disturbance to trace wires, encasements, cathode protection,
8 permanent above-ground stakes or other such items utilized for
9 protection of the underground facility.

10 2. In the event of any damage or dislocation or disturbance
11 to any underground facility or any protective devices required to be
12 reported by the excavator under subsection 1 of this section, in
13 advance of or during the excavation work, the person responsible
14 for the excavation operations shall not conceal or attempt to
15 conceal such damage or dislocation or disturbance, nor shall that
16 person attempt or make repairs to the facility unless authorized by
17 the owner or operator of the facility. In the case of sewer lines or
18 facilities, emergency temporary repairs may be made by the
19 excavator after notification without the owners' or operators'
20 authorization to prevent further damage to the facilities. Such
21 emergency repairs shall not relieve the excavator of responsibility
22 to make notification as required by subsection 1 of this section.

23 3. Any person who violates in any material respect the
24 provisions of section 319.022, 319.025, 319.026, 319.029, 319.030,
25 319.037, or this section or who willfully damages an underground
26 facility shall be liable to the state of Missouri for a civil penalty of
27 up to ten thousand dollars for each violation for each day such
28 violation persists, except that the maximum penalty for violation
29 of the provisions of sections 319.010 to 319.050 shall not exceed
30 five hundred thousand dollars for any related series of
31 violations. An action to recover such civil penalty may be brought
32 by the attorney general or a prosecuting attorney on behalf of the
33 state of Missouri in any appropriate circuit court of this
34 state. Trial thereof shall be before the court, which shall consider
the nature, circumstances and gravity of the violation, and with

35 respect to the person found to have committed the violation, the
36 degree of culpability, the absence or existence of prior violations,
37 whether the violation was a willful act, the effect on ability to
38 continue to do business, any good faith in attempting to achieve
39 compliance, ability to pay the penalty, and such other matters as
40 justice may require in determining the amount of penalty imposed.

41 4. The attorney general may bring an action in any
42 appropriate circuit court of this state for equitable relief to redress
43 or restrain a violation by any person of any provision of sections
44 319.010 to 319.050. The court may grant such relief as is
45 necessary or appropriate, including mandatory or prohibitive
46 injunctive relief, temporary or permanent.]

[319.050. The provisions of sections 319.025 and 319.026
2 shall not apply to any excavation when necessary due to an
3 emergency as defined in section 319.015. An excavation may
4 proceed regarding such emergency, provided all reasonable
5 precautions have been taken to protect the underground facilities.
6 In any such case, the excavator shall give notification,
7 substantially in compliance with section 319.026, as soon as
8 practical, and upon being notified that an emergency exists, each
9 underground facility owner in the area shall, within two hours
10 after receiving such notice, provide markings or contact the
11 excavator with any information immediately available to assist the
12 excavator and shall inform the excavator if not able to mark within
13 the two hours of when the underground facility will be marked at
14 the site of the emergency. The excavator may be liable to the
15 owner or operator for costs directly associated with the locating of
16 any such underground facility relating to a notification of an
17 emergency that does not meet the definition of emergency as stated
18 in section 319.015.]

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